

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

JOSE GALLIMORT,
Plaintiff,

v.

PAROLE COMMISSIONER T. HANEBECK
et al.,
Defendants.

2:15-cv-348-JCM-PAL

SCREENING ORDER

Plaintiff, who is a prisoner in the custody of the Nevada department of corrections (“NDOC”), has submitted a civil rights complaint pursuant to 42 U.S.C. § 1983 and has filed an application to proceed *in forma pauperis*.¹ (ECF No. 1, 1-1, 3, 4). The court now screens plaintiff’s civil rights complaint pursuant to 28 U.S.C. § 1915A.

I. SCREENING STANDARD

Federal courts must conduct a preliminary screening in any case in which a prisoner seeks redress from a governmental entity or officer or employee of a governmental entity. See 28 U.S.C. § 1915A(a). In its review, the court must identify any cognizable claims and dismiss any claims that are frivolous, malicious, fail to state a claim upon which relief may be granted or seek monetary relief from a defendant who is immune from such relief. See 28 U.S.C. § 1915A(b)(1),(2). *Pro se* pleadings, however, must be liberally construed. *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990). To state a claim under 42 U.S.C. § 1983, a plaintiff must allege two essential elements: (1) the violation of a right secured by the Constitution or laws of the United States, and (2) that the alleged violation was committed by

¹ Plaintiff’s application to proceed *in forma pauperis* is complete when looking at multiple docket entries. (See ECF No. 1, 3, 4).

1 a person acting under color of state law. See *West v. Atkins*, 487 U.S. 42, 48 (1988).

2 In addition to the screening requirements under § 1915A, pursuant to the Prison
3 Litigation Reform Act (PLRA), a federal court must dismiss a prisoner's claim, if "the allegation
4 of poverty is untrue," or if the action "is frivolous or malicious, fails to state a claim on which
5 relief may be granted, or seeks monetary relief against a defendant who is immune from such
6 relief." 28 U.S.C. § 1915(e)(2). Dismissal of a complaint for failure to state a claim upon which
7 relief can be granted is provided for in Federal Rule of Civil Procedure 12(b)(6), and the court
8 applies the same standard under § 1915 when reviewing the adequacy of a complaint or an
9 amended complaint. When a court dismisses a complaint under § 1915(e), the plaintiff should
10 be given leave to amend the complaint with directions as to curing its deficiencies, unless it
11 is clear from the face of the complaint that the deficiencies could not be cured by amendment.
12 See *Cato v. United States*, 70 F.3d 1103, 1106 (9th Cir. 1995).

13 Review under Rule 12(b)(6) is essentially a ruling on a question of law. See *Chappel*
14 *v. Lab. Corp. of America*, 232 F.3d 719, 723 (9th Cir. 2000). Dismissal for failure to state a
15 claim is proper only if it is clear that the plaintiff cannot prove any set of facts in support of the
16 claim that would entitle him or her to relief. See *Morley v. Walker*, 175 F.3d 756, 759 (9th Cir.
17 1999). In making this determination, the court takes as true all allegations of material fact
18 stated in the complaint, and the court construes them in the light most favorable to the plaintiff.
19 See *Warshaw v. Xoma Corp.*, 74 F.3d 955, 957 (9th Cir. 1996). Allegations of a *pro se*
20 complainant are held to less stringent standards than formal pleadings drafted by lawyers.
21 See *Hughes v. Rowe*, 449 U.S. 5, 9 (1980). While the standard under Rule 12(b)(6) does not
22 require detailed factual allegations, a plaintiff must provide more than mere labels and
23 conclusions. *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007). A formulaic recitation
24 of the elements of a cause of action is insufficient. *Id.*

25 Additionally, a reviewing court should "begin by identifying pleadings [allegations] that,
26 because they are no more than mere conclusions, are not entitled to the assumption of truth."
27 *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). "While legal conclusions can provide the
28 framework of a complaint, they must be supported with factual allegations." *Id.* "When there

1 are well-pleaded factual allegations, a court should assume their veracity and then determine
2 whether they plausibly give rise to an entitlement to relief.” *Id.* “Determining whether a
3 complaint states a plausible claim for relief . . . [is] a context-specific task that requires the
4 reviewing court to draw on its judicial experience and common sense.” *Id.*

5 Finally, all or part of a complaint filed by a prisoner may therefore be dismissed *sua*
6 *sponte* if the prisoner’s claims lack an arguable basis either in law or in fact. This includes
7 claims based on legal conclusions that are untenable (e.g., claims against defendants who are
8 immune from suit or claims of infringement of a legal interest which clearly does not exist), as
9 well as claims based on fanciful factual allegations (e.g., fantastic or delusional scenarios).
10 See *Neitzke v. Williams*, 490 U.S. 319, 327-28 (1989); see also *McKeever v. Block*, 932 F.2d
11 795, 798 (9th Cir. 1991).

12 II. SCREENING OF COMPLAINT

13 In the complaint, plaintiff sues multiple defendants for events that took place while
14 plaintiff was incarcerated at High Desert State Prison (“HDSP”). (ECF No. 1-1 at 1). Plaintiff
15 sues defendants T. Hanebeck (parole commissioner), T. Bass (parole commissioner), Y.
16 Morales (parole commissioner), T. Goodson (parole commissioner), M. Veith (parole
17 commissioner), C. Bisbee (parole commissioner), D. Salling (parole commissioner), Tony
18 Corda (parole commissioner), Susan Jackson (parole commissioner), Adam Endel (parole
19 commissioner), Maurice Silva (parole commissioner), and Ed Gray Jr. (parole commissioner).
20 (2-4). Plaintiff alleges two counts and seeks monetary damages and the grant of parole on
21 all convicted counts. (*Id.* at 14, 19).

22 The complaint alleges the following: Three different parole boards have denied plaintiff
23 parole even though he has participated in programs and education. (*Id.* at 6-8). These three
24 boards violated plaintiff’s Fifth, Eighth, and Fourteenth Amendment rights because they
25 discriminated against him by granting other prisoners who participated in the same programs
26 parole. (*Id.*). Additionally, the parole commissioners have stated that plaintiff was a violent
27 person even though he has proven rehabilitation. (*Id.* at 10). The commissioners used sexual
28 assault on the victim but plaintiff asserts that he was only convicted of first degree kidnapping

1 without proof of battery. (*Id.*). Plaintiff argues that the commissioners grant celebrity
2 prisoners, such as O.J. Simpson, parole on their first try. (*Id.* at 12). Plaintiff also argues that
3 he had been transferred to the prison prior to his sentencing because the county jail had been
4 full. (*Id.* at 14).

5 The Supreme Court has held that a prisoner in state custody cannot use a § 1983
6 action to challenge “the fact or duration of his confinement,” but instead must seek federal
7 habeas corpus relief or the appropriate state relief. *Wilkinson v. Dotson*, 544 U.S. 74, 78
8 (2005). In *Wilkinson*, the Supreme Court held that “a state prisoner’s § 1983 action is barred
9 (absent prior invalidation)--no matter the relief sought (damages or equitable relief), no matter
10 the target of the prisoner’s suit (state conduct leading to conviction or internal prison
11 proceedings)--if success in that action would necessarily demonstrate the invalidity of
12 confinement or its duration. *Id.* at 81-82.

13 The Ninth Circuit has held that “a challenge to the procedures used in the denial of
14 parole necessarily implicates the validity of the denial of parole and, therefore, the prisoner’s
15 continuing confinement.” *Butterfield v. Bail*, 120 F.3d 1023, 1024 (9th Cir. 1997). “This is true
16 whether that denial is alleged to be improper based upon procedural defects in the parole
17 hearing or upon allegations that parole was improperly denied on the merits.” *Id.* The Ninth
18 Circuit has held that prisoners’ claims that are based on the “deceit and bias” on the part of
19 the decision makers and allege that their prolonged incarcerations are due to the purported
20 bias of state officials imply the invalidity of the prisoners’ confinement. *McQuillion v.*
21 *Schwarzenegger*, 369 F.3d 1091, 1097 (9th Cir. 2004).

22 In this case, plaintiff is attempting to invalidate his confinement by challenging the
23 procedures and decisions the parole commissioners used to deny him parole. As such, the
24 court dismisses this case in its entirety, with prejudice, as amendment would be futile.

25 **III. CONCLUSION**

26 For the foregoing reasons, IT IS ORDERED that plaintiff’s application to proceed *in*
27 *forma pauperis* (ECF No. 3, 4) without having to prepay the full filing fee is **GRANTED**.
28 Plaintiff shall **not** be required to pay an initial installment fee. Nevertheless, the full filing fee

1 shall still be due, pursuant to 28 U.S.C. § 1915, as amended by the Prisoner Litigation Reform
2 Act. The movant herein is permitted to maintain this action to conclusion without the necessity
3 of prepayment of fees or costs or the giving of security therefor. This order granting *in forma*
4 *pauperis* status shall not extend to the issuance and/or service of subpoenas at government
5 expense.

6 **IT IS FURTHER ORDERED** that, pursuant to 28 U.S.C. § 1915, as amended by the
7 Prisoner Litigation Reform Act, the Nevada department of corrections shall pay to the Clerk
8 of the United States District Court, District of Nevada, 20% of the preceding month's deposits
9 to the account of Jose Gallimort, #56977 (in months that the account exceeds \$10.00) until
10 the full \$350 filing fee has been paid for this action. The clerk shall send a copy of this order
11 to the attention of **Albert G. Peralta, Chief of Inmate Services for the Nevada Department**
12 **of Prisons**, P.O. Box 7011, Carson City, NV 89702.

13 **IT IS FURTHER ORDERED** that, even if this action is dismissed, or is otherwise
14 unsuccessful, the full filing fee shall still be due, pursuant to 28 U.S.C. §1915, as amended by
15 the Prisoner Litigation Reform Act.

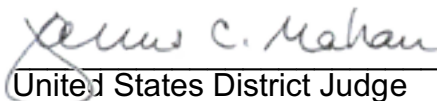
16 **IT IS FURTHER ORDERED** that the clerk of the court shall file the complaint (ECF No.
17 1-1).

18 **IT IS FURTHER ORDERED** that the complaint is dismissed in its entirety, with
19 prejudice, as amendment would be futile, for failure to state a claim.

20 **IT IS FURTHER ORDERED** that this court certifies that any *in forma pauperis* appeal
21 from this order would **not** be taken "in good faith" pursuant to 28 U.S.C. § 1915(a)(3).

22 **IT IS FURTHER ORDERED** that the clerk of the court shall enter judgment accordingly.

23
24 DATED: June 22, 2015.

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26 
27 United States District Judge
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